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Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b),) MB Docket No. 05-10
Table of Allotments) RM-11140
FM Broadcast Stations)
(Monument, Prairie City, Prineville)
and Sisters, Oregon, and Weiser, Idaho)

RECEIVED

OCT 20 2005

Federal Communications Commission
Office of Secretary

TO: Secretary
Attn: Chief, Allocations Branch, Audio Services Division, Media Bureau

JOINT REQUEST FOR APPROVAL OF SETTLEMENT AGREEMENT

SSR Communications Incorporated ("SSR") and Two Hearts Communications, LLC ("Two Hearts"), each a "Party," (collectively the "Parties"), respectfully file this Joint Request for Approval of Settlement Agreement to resolve the matters at issue in the captioned docketed proceeding relating to proposed allotment of FM radio channels in Oregon and Idaho. In support hereof, the following is shown:

1. SSR and Two Hearts have executed the attached Settlement Agreement (the "Agreement") that looks toward resolution of conflicting rule making proposals and contemplates other undertakings designed to foster the efficient development of FM service. A copy of the Agreement is **Attachment No. 1** hereto.

2. Specifically, SSR submitted a counterproposal in the above-captioned matter, *inter alia*, for allotment of FM Channel 265C at Prairie City, Oregon. If the Agreement is approved, Channel 260C may be allotted to Prairie City in lieu of Channel 265C. The Settlement Agreement also contemplates the substitution of FM Channel 280C1 at such community's reference coordinates for the Channel 280C allotment proposed for Monument, Oregon in the SSR counterproposal. If the Commission substitutes the allotment of Channel 260C to Prairie City in lieu of Channel 265C, and allots Channel 280C1 to

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Monument in lieu of Channel 280C, all of the legitimate interests of the other parties involved in the above-captioned matter may be protected without conflicting with any other pending matter.¹ Such a settlement will conserve the Commission's resources by resolving the conflicting proposals. This will redound to the benefit of the public as well as to the private interests of the parties to the settlement.

2. The Agreement provides, as consideration for settlement, that SSR will be compensated in the amount of Five Thousand Dollars, representing part of the legitimate and prudent expenses incurred by Two Hearts in connection with the preparation, filing and advocacy of its counterproposal, consistent with the requirements of 47 C.F.R. §1.420(j). The Declaration attached hereto certifies to this effect.

3. Clearly, implementation of the Settlement Agreement, after FCC approval, will serve the public interest because it will expedite the inauguration of new FM radio service to Prairie City, Prineville and Monument, Oregon, without a need for further FCC action in MB Docket 05-10, thereby conserving the Commission's resources.

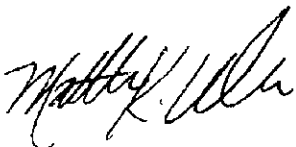
4. The Parties' Settlement Agreement is also in the public interest inasmuch as it will promote the efficient allocation and utilization of commercial FM spectrum.

¹ Substituting Channel 260C at Prairie City in lieu of Channel 265C removes a conflict with Two Hearts' request to upgrade station KHSS from Channel 264C3 at Walla Walla, Washington and to to 264C2 in Athena, Oregon as a first local FM service. (The plan for allotment of Channel 266A at Monument (as originally proposed in the NPRM) is no longer part of this proceeding, as Klickitat Broadcasters, Inc., which had originally sought allotment of a channel in Monument, has unilaterally withdrawn its expression of interest in the Monument allotment.) Substituting Channel 280C1 at Monument removes the need for Station KWPK at Sisters, Oregon to show cause why it ought not change its frequency from Channel 281C2 to 282C2, as well as removing the conflict with the proposal, *inter alia*, to allot Channel 279C at Albany, Oregon and related changes as contained in a petition for rule making filed March 21, 2005 on behalf of Portland Broadcasting, LLC, M.S.W Communications LLC, Columbia Gorge Broadcasting, LLC, and Extra Mile Media, Inc. Thus, the settlement proposal is global, in that it resolves all conflicting proposals insofar as they relate to the matters at issue in this docket relating to Monument, Prineville and Prairie City, Oregon, and Weiser, Idaho.


WHEREFORE, THE PREMISES CONSIDERED, It is respectfully requested that (a) the Settlement Agreement be approved; and that (b) the Table of FM Allotments, Section 73.202(b) of the Rules be amended as proposed in the Settlement Agreement.

Respectfully submitted,

SSR COMMUNICATIONS INCORPORATED

By: 
Matthew K. Wesolowski
Chief Executive Officer
5270 West Jones Bridge Road
Norcross, GA 30092-1628

TWO HEARTS COMMUNICATIONS, LLC

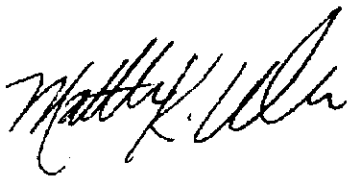
By: 
David Tillotson
LAW OFFICE OF DAVID TILLOTSON
4606 Charleston Terrace, N.W.
Washington, D.C. 20007-1911

DECLARATION OF Matthew K. Wesolowski

Matthew K. Wesolowski declares as follows:

1. I am the principal of **SSR COMMUNICATIONS INCORPORATED** ("SSR"), counterproponent in matter RM-11140 pending before the FCC.
2. I certify that SSR's application was not filed for the purpose of reaching or carrying out the parties' agreement and that, other than the consideration recited in the Settlement Agreement, neither SSR nor anyone associated with SSR paid or received any other consideration in connection with the settlement. No other Agreements or any oral agreements relate to such settlement. The sole monetary consideration that Horizon is committed to pay to SSR in connection with this settlement is **FIVE THOUSAND DOLLARS** (\$5,000.00), subject to the FCC's consent and approval. The Settlement Funds do not exceed the legitimate and prudent expenses of SSR.

I declare under penalty of perjury that the foregoing is true and correct. Dated this 19th day of October 2005.

By: 
Matthew K. Wesolowski

Remit To: MATTHEW K. WESOLOWSKI
257 2ND STREET
FLORA, MS 39071

SSR COMMUNICATIONS, INC.
5270 WEST JONES BRIDGE ROAD
NORCROSS, GA 30092-1628

Page: 1
Date: 03/29/2005
Account: SSR-SCC(G)

Attn: Accounts Payable

INVOICE NUMBER	INVOICE DATE	REMARK	OPEN AMOUNT	ADJ.	BALANCE DUE
0320050088	03/29/2005	ENGINEERING STUDY FM ALLOTMENT ALLOCATIONS AT MONUMENT, OR, PRAIRIE CITY, OR, PRINEVILLE, OR. 32.0 LABOR HOURS BETWEEN MARCH 5 AND MARCH 14, 2005.	5120.00	.00	5120.00
TOTAL CURRENT BALANCE DUE					5120.00

ACCOUNT AGING

CURRENT	1-30	31-60	61-90	91-120	120+
5120.00	.00	.00	.00	.00	.00

SETTLEMENT AGREEMENT

This Agreement is made as of the 19th day of October, 2005, by and between **SSR COMMUNICATIONS INCORPORATED** ("**SSR**") and **TWO HEARTS COMMUNICATIONS, LLC** ("**Two Hearts**"), each of whom is referred to herein as a "**Party**," or collectively as "**the Parties**."

Recitals

On November 29, 2004, Klickitat Broadcasting filed a Petition for Rule Making (the "**Petition**") with the Federal Communications Commission ("**FCC**") requesting an amendment to the Table of FM Allotments, 47 C.F.R. 73.202(b) (the "**Table**"), by, *inter alia*, proposing the allotment of FM Channel 229A to Monument, Oregon. This Petition was assigned rulemaking number RM-11140. The FCC's Media Bureau, in its Notice of Proposed Rule Making in Docket No. MB 05-10, proposed the allotment of Channel 266A to Monument, in lieu of the requested Channel 229A, in order to avoid a conflict with an application pending in FCC Spectrum Auction 37 for vacant Channel 228C1 at Condon, Oregon.

On March 21, 2005, SSR filed with the FCC a Counterproposal and Request for Show Cause in MB Docket No. 05-10 (the "**Counterproposal**"), proposing allotment, *inter alia*, of Channel 265C to Prairie City, Oregon, and Channel 280C to Monument, as well as FM Channel 267C1 to Prineville, Oregon. In order to accommodate the use of Channel 280C at Monument, SSR requested that station KWPK, Sisters, Oregon be required to move from Channel 281C2 to Channel 282C2. Horizon Broadcasting, L.L.C., the present licensee of KWPK, protested SSR's plan due to the anticipated disruption of the operations of KWPK.

Meanwhile, Klickitat Broadcasting withdrew its expression of interest in the allotment of a new FM frequency to Monument, Oregon. In addition, Two Hearts Communications, LLC filed a timely counterproposal in MB Docket 05-09 seeking to allot FM Channel 264C2 to Athena, Oregon. Because such a change would conflict with SSR's proposed use of Channel 265C at Prairie City, on April 6, 2005, Two Hearts filed Reply Comments (effectively comments on the SSR counterproposal), showing that Channel 260C can be allotted to Prairie City in lieu of Channel 265C, thereby avoiding the conflict with the Athena proposal. The suggested substitution of Channel 260C for Channel 265C as the channel to be allotted to Prairie City is referenced herein as the "**Substitution**."

In addition, the parties have determined that modification of the SSR counterproposal as it relates to the allotment of a new FM channel at Monument, Oregon to specify Channel 280C1 at such community's reference coordinates in lieu of Channel 280C as proposed earlier (the "**Amendment**") will eliminate (i) the need for station KWPK, Sisters, Oregon to change channels and (ii) certain line of sight concerns of SSR.

More recently, the Commission has accepted for filing a petition for rulemaking filed by Portland Broadcasters, LLC ("PBL") on March 21, 2005, identified by RM No. 11279, treating it as a further counterproposal in MB Docket 05-10. PBL seeks, *inter alia*, certain channel substitutions involving the use of Channel 279C in western Oregon, which may be mutually exclusive with the proposed allotment of Channel 280C to Monument, Oregon.

SSR has concluded that it would be in the best interest of SSR and in the public interest for it to accept the *Substitution*, replacing Channel 265C with Channel 260C for Prairie City, Oregon, as suggested in the above-referenced Reply Comments filed by Two Hearts, and to effect the *Amendment*, thereby eliminating the conflict between the proposed delivery of a first local service to Monument on the one hand, and both the plans of PBL and the desire of Horizon to keep KPWK on its present frequency on the other.

Two Hearts is willing to reimburse SSR in connection with such Substitution and Amendment.

NOW, THEREFORE, with the intention of being legally bound hereby and in consideration of (i) the payment of monetary consideration to SSR by Two Hearts and (ii) the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. ***Modification of Counterproposal.*** As consideration, in part for this Settlement Agreement, SSR agrees to request that the FCC modify SSR's Counterproposal consistent with the Substitution and the Amendment.

2. ***Compensation to SSR.*** Two Hearts shall compensate SSR in the total amount of **FIVE THOUSAND DOLLARS (\$5,000.00)** (the "*Settlement Funds*") in connection with the Substitution, if and to the extent that the FCC approves such payment, the parties having hereby agreed that such Settlement Funds constitute the only compensation to SSR and do not exceed the legitimate and prudent expenses of SSR in connection with this matter. Such Settlement Funds shall be placed into the Trust Account of the Law Office of David Tillotson within two business days of the date on which a Joint Petition for Approval of Agreement, consistent with the FCC's rules ("*Joint Petition*"), is filed with the FCC in connection with this Agreement. Two Hearts' counsel shall release and disburse the Settlement Funds to SSR within five business days of the date the FCC Order (or Orders) approving this Agreement, accepting the Substitution and the Amendment, and granting the Petition becomes a Final Order. Any interest earned on the Settlement Funds prior to disbursement shall be the property of Two Hearts.

3. ***Deliveries by Two Hearts.*** Two Hearts shall prepare the Joint Petition in a form and in substance that is reasonably acceptable to SSR, and submit such draft Joint Petition to SSR simultaneously with the execution of this Agreement by the Parties. Two Hearts may also seek the participation in the Joint Petition of other parties involved in MB Docket 05-10, but shall not be obligated to do so, and the Parties' obligations to each other hereunder shall not be contingent on the participation by other entities that have filed petitions, proposals or comments in that docket.

4. ***Deliveries by SSR.*** In consideration for Two Hearts entering into this Agreement, within one business day of the receipt of the draft Joint Petition, SSR shall fax to counsel for Two Hearts an executed counterpart of the Joint Petition and supporting Declaration, unequivocally requesting that FCC amend the Counterproposal with prejudice, in accordance with the Substitution and Amendment, contingent upon the approval of this Agreement by the FCC.

5. ***Filing with FCC.*** Two Hearts shall file the Joint Petition and supporting materials with the FCC within three business days of the execution of this Agreement by all the parties hereto.

6. ***Extension of Agreement.*** If by December 31, 2006, the FCC has not (i) approved this Agreement, (ii) granted the Petition, and (iii) amended the Counterproposal, or should such Order or Orders not have become final by February 15, 2007, then this Agreement shall terminate automatically, except that it may be extended by either Party, upon advance written notice to the other Party, for up to five additional terms of one year.

7. ***Reasonable Prosecution.*** The Parties will coordinate with and diligently prosecute before the FCC, the Joint Petition and the Amendment.

8. ***Final Order.*** A "Final Order" for purposes of this Settlement Agreement means an Order of the FCC (or any of its officials acting pursuant to delegated authority) as to which (a) the time for filing a petition for reconsideration, application for review or a court appeal, and the time within which the FCC may review said Order on its own motion, have all expired; (b) no such petition for reconsideration, application for review or court appeal has been timely filed, and (c) the FCC has not reviewed said Order on its own motion; or, (d) in the event that any such petition, application or appeal has been filed or such action taken, such petition, application, appeal or action shall have been disposed of and the time for seeking further administrative or judicial review of the Commission's Order shall have expired without any request for such further review having been filed.

9. ***Ancillary and Supporting Materials; Cooperation.*** Simultaneously with or promptly following the submission of the Joint Petition, the Parties will prepare and file with the Commission, for association with the Joint Petition, such statements and other supporting materials as may be necessary or appropriate, requesting that the FCC approve this Settlement Agreement (the "Ancillary Materials"), and take such further action as is contemplated hereby. The Parties will use commercially reasonable efforts and cooperate to the extent necessary to prepare and file whatever documents may be required to seek and obtain final FCC approval of this Settlement Agreement. Further, so long as this Agreement is in effect, neither Party shall take action to impede or frustrate the eventual amendment to the Table of FM Allotments to allot FM Channel 280C1 to Monument, Oregon as a first local service, FM Channel 260C to Prairie City, Oregon as a first local service, or Channel 267C1 to Prineville, Oregon as requested by SSR, nor shall either party take any action to allot Channel 265, 266 or 267 (using any class of station) to Prairie City or to any community within 80 miles of Keating, Oregon, or to apply for stations on those channels in that area, during the two years following the lifting of the freeze imposed by the FCC in MB Docket 05-210.

10. ***Confidentiality.*** The Parties agree to maintain the confidentiality of the negotiations leading to this Agreement and, unless and until a Joint Petition is filed with the Commission, the terms hereof, except for such disclosures as may be necessary or appropriate in the course of seeking participation in the Joint Petition by other parties involved in MD Docket 05-10.

11. ***Interpretation.*** This Settlement Agreement shall be governed and construed under the laws of the District of Columbia, the Communications Act of 1934, as amended, and the FCC's Rules and Regulations.

12. ***Representations.*** Each Party represents to the other Party that (a) it is not under any restrictions, contractual or otherwise, that may be inconsistent with this Settlement Agreement or that would prevent or preclude such Party from entering into this Settlement Agreement or from performing such Party's obligations hereunder; and (b) this Settlement Agreement is a legally binding obligation of such Party and is enforceable against such Party in accordance with its terms. This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors, heirs and assigns.

13. ***Notices.*** Any notices or other communications shall be in writing unless otherwise stated, and shall be considered to have been duly given when sent by a recognized overnight

delivery service or when deposited into United States certified mail, postage paid, return receipt requested, as follows:

(a) If to SSR, to:

Matthew K. Wesolowski
Chief Executive Officer
SSR Communications Incorporated
5270 West Jones Bridge Road
Norcross, GA 30092-1628

(b) If to Two Hearts, to:

Law Office of David Tillotson
4606 Charleston Terrace, N.W.
Washington, D.C. 20007-1911

13. ***Complete Agreement.*** This Settlement Agreement constitutes the entire understanding between the Parties respecting the Counterproposal, and supersedes any prior or contemporaneous written or oral agreements or understandings between them. No modification, amendment or waiver of any provision of this Settlement Agreement, in whole or in part, will be valid unless in writing signed by the Parties.

14. ***Counterpart Signatures; Effective Date.*** This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all counterparts so executed shall constitute one agreement binding on the Parties hereto, notwithstanding that the Parties are not signatory to the same counterpart. This Agreement shall be effective as of the date on which the parties exchange the executed counterparts.

15. ***Declaration and Certification.*** SSR's supporting Declaration shall cover the matters called for by Section 1.420(j) of the FCC's rules.

16. ***Severability.*** In the event that any part or provision of this Settlement Agreement is found to be invalid, such invalidity shall not affect the enforceability of any other part or provision of this Settlement Agreement, unless the invalidity would cause a material change in the rights or obligations of any Party, in which case the Party or Parties affected may seek to amend the Settlement Agreement or may withdraw from the Settlement Agreement.

17. ***Essence of Time.*** Time is of the essence of this Agreement.

18. **Voluntary Undertaking.** Each of the Parties hereto respectively acknowledges that it is liable for the obligations as set forth in this Agreement. Each party further respectively states that this Agreement has been voluntarily signed in good faith, is a fair and equitable settlement of all controversies and matters that each party hereto may have with any other party to this Agreement. Each party hereto further respectively states and acknowledges, that it has had the opportunity to consult with and/or has been represented by counsel in connection with the negotiations of the transactions contemplated by this Agreement and the execution of this document.

19. **Breach.** Notwithstanding the above provisions of this Agreement, nothing herein shall be construed to act to release the parties hereto and their respective principals from any claims, demands, damages, causes of action or suits of any kind or nature whatsoever, which may arise in the event of a breach of any of the terms, conditions and provisions of this Agreement, or any agreements incorporation by reference or otherwise herein.

20. **No Waiver.** Failure of any party to complain of any act or omission on the part of any other party in breach of this Agreement, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by any party at any time, express or implied, of any breach of any provision of this Agreement shall be deemed a waiver of any other provision of this Agreement or a consent to any subsequent breach of the same or other provisions.

21. **Compromise; No Admission.** This Agreement is the result of a compromise and shall never, at any time or for any purpose, be considered an admission of liability or responsibility on the part of any party herein released. Each party hereto farther respectively acknowledges and agrees that nothing contained herein may be or is to be construed as an admission by any party hereto, or any of their affiliates, that they have engaged in any wrongdoing or any unlawful conduct

22. **Expenses.** The parties hereto acknowledge and agree that each of them shall bear the cost, expenses and attorneys' fees arising out of or connected with this Agreement, including the negotiation, drafting and execution of this Agreement and all matters arising out of or connected therewith; except that in the event any action is brought by either party to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs, in addition to all other relief in law or equity to which that party may be entitled.

23. **Construction.** This Agreement is the product of negotiation and preparation by, between and among the parties hereto. Accordingly, the parties hereto acknowledge and

agree that this Agreement shall not be deemed prepared or drafted by one party or another, and shall be construed accordingly.

24. ***Good Standing.*** Each party hereto is duly organized, validly existing and in good standing under the laws of its state of organization and, as applicable, the state or commonwealth of its incorporation or organization, and has full power and authority to carry on the business now being conducted by it.

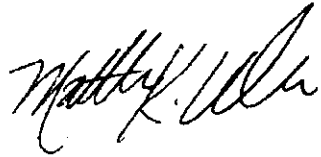
25. ***Authorization.*** Each party hereto has full power and authority to enter into this Agreement; and the execution, delivery and consummation of this Agreement have been duly authorized by all necessary action on its part. This Agreement constitutes a valid and binding obligation of each of the parties hereto.

26. ***Competency.*** Each of the signatories hereto represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign; and each agrees to indemnify and hold harmless each other party hereto against all claims, suits, actions and demands, including necessary expenses of investigation and reasonable attorneys' fees and costs, in which it may be asserted that he or she was not competent or so authorized to execute this Agreement and to receive the consideration therefor.

27. ***Explication.*** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and to the singular include the plural, references to any gender include any other gender, the part includes the whole, the term "including" is not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, exhibit and schedule references are to this Agreement, unless otherwise specified. Any reference in or to this Agreement or any of the Ancillary Materials includes any and all permitted alterations, amendments, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date first indicated above, to be effective as of the date of last signature as indicated below.

**SSR COMMUNICATIONS
INCORPORATED**



By: _____
Matthew K. Wesolowski
Chief Executive Officer

Date: October 19, 2005

TWO HEARTS COMMUNICATIONS, LLC

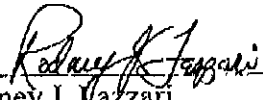
By: /s/ Rodney Fazzari
Member
Date: October ~~19~~, 2005

- 8 -

By: _____
Matthew K. Wcsolowski
Chief Executive Officer

Date: _____

TWO HEARTS COMMUNICATIONS, LLC

By:  _____
Rodney J. Pazzari
Member

Date: 10-20-2005

- 8 -

By: _____
Matthew K. Wcsolowski
Chief Executive Officer

Date: _____

TWO HEARTS COMMUNICATIONS, LLC

By: Rodney J. Farzari
Rodney J. Farzari
Member

Date: -10-19-2015